

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

DENNIS KELLER and CRYSTAL  
KELLER,

Plaintiffs,

v.

CITY OF STOCKTON, et al.,

Defendants.

NO. CIV. S-04-1325 LKK/DAD

O R D E R

Pending before the court are motions for judgment as a matter of law ("JMOL"), for a new trial, or for remittitur brought by the City of Stockton, Officer Kathryn Henderson, and Sergeant Ken Praegitzer ("defendants"). Plaintiffs, Dennis and Crystal Keller, oppose these motions. For the reasons set forth below, defendants' motion for remittitur is granted in part and denied in part. All other motions must be denied.

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I.

**FACTUAL BACKGROUND**

On July 10, 2002, four-year-old Crystal Keller was taken from her day care provider's house in Sacramento by Stockton Police Officers Kathryn Henderson ("Henderson") and Ken Takeda ("Takeda") and placed at a children's shelter in Stockton.<sup>1</sup> The removal was approved by Henderson's supervisor, Stockton Police Sergeant Ken Praegitzer ("Praegitzer"). Trial Transcript ("TT") at 41:8-9. No warrant was obtained prior to removing Crystal. TT at 42:4-5. On July 9, 2004, plaintiffs filed suit against the City of Stockton ("City"), the County of San Joaquin, Child Protective Services worker Jose Romero, and Officers Henderson and Praegitzer, alleging unreasonable seizure of Crystal from the custody of her father. Suit was premised on 42 U.S.C. § 1983 and alleged violations of the Fourth and Fourteenth Amendments to the U.S. Constitution.<sup>2</sup> Specifically, plaintiffs alleged that defendants unreasonably seized Crystal and unlawfully interfered with their parent-child relationship. Amend. Compl. at 4:23; TT at 426:4.

After a four-day trial, which ended on March 31, 2006, the jury found that the City, Henderson, and Praegitzer violated the Kellers' civil rights and awarded compensatory damages to Dennis Keller in the amount of \$100,000 and to Crystal Keller in the amount of \$500,000. The jury awarded punitive damages against

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<sup>1</sup> Officer Takeda was not named as a defendant.

<sup>2</sup> During discovery, plaintiffs dismissed the County of San Joaquin and Jose Romero.

1 Henderson and Praegitzer in the amount of \$1,000,000 for each  
2 plaintiff, for a total of \$2,600,000 in damages. Special Verdict,  
3 filed March 31, 2006. Defendants filed the present motions on  
4 April 17, 2006.

5 **II.**

6 **ANALYSIS**

7 Defendants make the following arguments: (1) the court erred  
8 in not instructing the jury as to the rules for protective custody  
9 set forth in California Penal Code § 279.6; (2) the jury's  
10 compensatory damages are so high they constitute a denial of  
11 justice; (3) plaintiffs failed to adequately support their claim  
12 for punitive damages; (4) the jury's punitive damages award denied  
13 Sergeant Praegitzer and Officer Henderson due process; and (5) that  
14 the jury's punitive damages awards "fail due process excessiveness  
15 scrutiny." Defs.' Mot. at 2.

16 Defendants urge the court to take one or more of the following  
17 actions: (1) order a new trial; (2) order plaintiffs to remit a  
18 portion of the compensatory damages or face a new trial on  
19 compensatory damages; (3) enter judgment as a matter of law in  
20 favor of Sgt. Praegitzer and Officer Henderson on plaintiffs'  
21 punitive damages claim; (4) order plaintiffs to remit a portion of  
22 the punitive damages or face a new trial on punitive damages. Id.  
23 Below, the court addresses defendants' arguments in the context of  
24 the motions in which they are raised.

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1 **A. MOTION FOR JUDGMENT AS A MATTER OF LAW**

2 Praegitzer and Henderson move for judgment as a matter of law  
3 pursuant to Fed. R. Civ. P. 50 on the issue of punitive damages  
4 because they contend "there was insufficient evidence presented at  
5 trial to support the jury's conclusion that defendants acted either  
6 with malice or in reckless disregard of the Kellers' rights."  
7 Defs.' Mot. at 2, 11. Defendants also assert that plaintiffs had  
8 the burden of establishing the appropriate amount of punitive  
9 damages and that they were required to present evidence regarding  
10 defendants' ability to pay punitive damages. Defendants' arguments  
11 are unavailing.

12 **1. Standards**

13 Defendants failed to move for JMOL before submission of the  
14 case to the jury. By not doing so, they failed to comply with the  
15 procedural prerequisite for renewing their motion for JMOL after  
16 trial, and thus, the court is precluded from reviewing the  
17 sufficiency of evidence. Janes v. Wal-Mart Stores, Inc., 279 F.3d  
18 883, 886-87 (9th Cir. 2002); Farley Transp. Co. v. Santa Fe Trail  
19 Transp. Co., 786 F.2d 1342, 1345 (9th Cir. 1985). The Ninth  
20 Circuit construes this requirement strictly. Farley, 786 F.2d at  
21 1346 ("the requirement that [a JMOL motion] be made at the close  
22 of all the evidence is to be strictly observed").

23 When a party loses its right to challenge the sufficiency of  
24 the evidence because it failed to file a procedurally-sound Rule  
25 50(b) motion, the court is limited to reviewing the jury's verdict  
26 for plain error and should reverse only if such plain error would

1 result in a "manifest miscarriage of justice." Janes, 279 F.3d at  
2 888 (9th Cir.2002). See also Bird v. Glacier Elec. Coop., Inc., 255  
3 F.3d 1136, 1148 (9th Cir. 2001)("We will review for plain or  
4 fundamental error [in a civil case] . . . where the integrity or  
5 fundamental fairness of the proceedings in the trial court is  
6 called into serious question"). If such a finding is made, this  
7 court is still not required to reverse unless the error "seriously  
8 affect[ed] the fairness, integrity, or public reputation of  
9 judicial proceedings." United States v. Cooper, 173 F.3d 1192, 1203  
10 (1999)(internal quotation and citations omitted).

11 As explained below, there is sufficient evidence from which  
12 a jury could conclude that punitive damages should be awarded.

13 **2. A Reasonable Jury Could Conclude that Defendants Acted**  
14 **With Deliberate Indifference to Plaintiffs' Rights**

15 The court instructed the jury that "plaintiff has the burden  
16 of proving that punitive damages should be awarded, and the amount,  
17 by a preponderance of the evidence," and that punitive damages are  
18 appropriate if the defendant's conduct "was malicious or in  
19 reckless disregard of plaintiff's rights."<sup>3</sup> See Jury Instructions,  
20 Instruction No. 31, filed March 31, 2006. The instruction further  
21 stated that "conduct is in reckless disregard of plaintiff's rights  
22 if, under the circumstances, it reflects complete indifference to  
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25 <sup>3</sup> See Dang v. Cross, 422 F.3d 800, 805-808 (9th Cir. 2005)  
26 (Punitive damages may be awarded in 42 U.S.C. § 1983 cases if  
defendant's conduct was malicious, oppressive, or in reckless  
disregard of plaintiff's rights).

1 the safety and rights of others."<sup>4</sup> Id. Defendants contend that  
2 there is no evidence from which a jury could conclude that  
3 Praegitizer or Henderson acted with malice or in reckless disregard  
4 of the Kellers' rights. I cannot agree.

5 Defendants argue that they followed city policy and there was  
6 no reason to believe that the policy deviated from the requirements  
7 of the law. The record, however, reflects that defendants were  
8 aware of the state-mandated procedures and standards that they were  
9 obligated to follow - specifically, Welfare and Institutions Code  
10 § 305 - and that they failed to do so. Defendants testified that  
11 they understood the law governing their conduct as codified in  
12 § 305 - that an "imminent threat" must be present.<sup>5</sup> Henderson

13  
14 <sup>4</sup> This instruction complies with the Supreme Court's  
15 conclusion that punitive damage awards in § 1983 cases "did not  
16 require a showing of actual malicious intent; they permitted  
punitive damage awards on variously stated standards of negligence,  
recklessness, or other culpable conduct short of actual malicious  
intent. Smith v. Wade, 461 U.S. 30, 45 (1983).

17 <sup>5</sup> Section 305 of the California Welfare and Institutions Code  
18 provides in pertinent part:

19 Any peace officer may, without a warrant, take into  
temporary custody a minor:

20 (a) When the officer has reasonable cause for believing  
21 that the minor is a person described in Section 300,  
22 and, in addition, that the minor has an immediate need  
23 for medical care, or the minor is in immediate danger of  
24 physical or sexual abuse, or the physical environment or  
25 the fact that the child is left unattended poses an  
26 immediate threat to the child's health or safety. In  
cases in which the child is left unattended, the peace  
officer shall first attempt to contact the child's  
parent or guardian to determine if the parent or  
guardian is able to assume custody of the child. If the  
parent or guardian cannot be contacted, the peace  
officer shall notify a social worker in the county

1 testified that a police officer is allowed to take a child without  
2 getting a warrant only when he or she was in "imminent danger," and  
3 in this case, sexual abuse. Trial Transcript ("TT") at 114-115.  
4 Henderson further testified that the removal of a child from a  
5 parent should only happen in "exigent circumstances" and that in  
6 this case, "it applied to sexual abuse," and could happen only  
7 where "she [Crystal] had either been sexually abused or at risk of  
8 being subjected to sexual abuse." TT at 111-112.

9 Despite her knowledge of the governing standards, Henderson  
10 removed Crystal based on one-year-old allegations against Dennis  
11 Keller which were previously investigated by Child Protective  
12 Services and found to be inconclusive. TT at 108-111. Henderson  
13 conducted no independent investigation as to Dennis Keller's  
14 parenting skills prior to removing Crystal from his care. Id.  
15 Because such evidence could lead a reasonable jury to conclude that  
16 defendants were aware of the legal standards which govern the  
17 removal of Crystal but that they nevertheless acted in "reckless  
18 disregard" of the Kellers' rights, the court did not err in  
19 allowing the punitive damages claim to go to the jury.

20 Defendants additionally assert that the punitive damages award  
21 cannot stand because plaintiffs "made no effort to establish an  
22 appropriate amount."<sup>6</sup> Defs.' Mot. at 12. Again, I cannot agree.

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23 welfare department to assume custody of the child.

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25 <sup>6</sup> As both parties agree, and as the court instructed the  
26 jury, plaintiffs bear the burden of establishing that punitive  
damages should be awarded, and the amount, by the preponderance of  
the evidence. See Ninth Cir. Jury Instructions, 7.5 Punitive

1 First, defendants have cited no binding authority, and the court  
2 has found none, which requires plaintiffs to tell the jury exactly  
3 how much they request in punitive damages. Secondly, it appears  
4 that plaintiffs met their burden of establishing the appropriate  
5 amount of damages by providing evidence that an award of punitive  
6 damages was appropriate, and then asking the jury to use their  
7 judgment to determine the appropriate amount.<sup>7</sup> While plaintiffs'  
8 counsel made no mention of the specific amount during the trial,  
9 he explained to the jury in his closing statement that the amount  
10 is to be "determined with the use of reason and consideration of  
11 the damages that we've been able to prove in this case." TT at  
12 399-400. Plaintiffs' counsel also argued to the jury that  
13 "defendants need to be told that what they did here is wrong so  
14 they don't do it again," and that plaintiffs hoped "this case has  
15 managed to serve a purpose to protect children in the future and  
16 protect Crystal in the future." TT at 399-400. Based on  
17 plaintiffs' instructions to the jury, the court holds that  
18 plaintiffs made an effort to establish the appropriate amount of  
19 damages as required under the law. No plain error occurred in  
20 allowing the punitive damages to be presented to the jury on this  
21 account.

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23 \_\_\_\_\_  
24 Damages.

25 <sup>7</sup> The court's instructions explained to the jury as to the  
26 proposed nature of punitive damages, identified the damages as  
punishment for civil wrongdoing, and explained that their  
imposition was not compulsory.



1 Finally, defendants contend that the punitive damages award  
2 cannot stand because plaintiffs failed to present evidence of  
3 defendants' financial condition, and that their motion for a new  
4 trial must be granted on this account. Defs.' Mot. at 12.  
5 Defendants cite to a number of cases from other circuits and from  
6 the California Supreme Court. While it may be true that this is  
7 a requirement in other jurisdictions, the Ninth Circuit has not  
8 imposed any such requirement for supporting a punitive damages  
9 award. C.f. Morgan v. Woessner, 997 F.2d 1244, 1259 (9th Cir.  
10 1993)(remanding only state law portion of punitive damages award  
11 for the purpose of reconsidering the award in light of the fact  
12 that plaintiff must provide evidence of defendant's financial worth  
13 under California law); see also Hilao v. Estate of Marcos, 103 F.3d  
14 767, 781-82 & n.7 (9th Cir. 1996)(approved a jury's discretion to  
15 consider financial condition as one relevant factor in awarding  
16 punitive damages).

17 For all the reasons discussed above, no plain error was  
18 committed and the court must accordingly deny defendants' motion  
19 for JMOL.

20 **B. MOTION FOR A NEW TRIAL**

21 Defendants request a new trial for two errors that they  
22 contend were made by the court - namely, that the court erred in  
23 declining to give defendants' special jury instruction based on  
24 California Penal Code § 279.6 and for providing a verdict form that  
25 "substantially confused the issue of punitive damages." Defs.'  
26 Mot. at 9, 12. Defendants' arguments are unavailing.

1           **1. Standards**

2           Defendants' failure to move for judgment as a matter of law  
3 does not preclude their motion for a new trial under Fed. R. Civ.  
4 P. 59. Freund v. Nycomed Amersham, 347 F.3d 752, 765 (9th Cir.  
5 2003). The Ninth Circuit has articulated a number of different  
6 circumstances that warrant a new trial, stating that district  
7 courts have discretion to grant Rule 59 motions when the verdict  
8 is "against the clear [or "great"] weight of the evidence," when  
9 the evidence shows that the jury has reached a "seriously erroneous  
10 result," and/or when the evidence shows that acceptance of the  
11 verdict would cause a "miscarriage of justice." Id.; EEOC v. Pape  
12 Lift, Inc., 115 F.3d 676, 680 (9th Cir. 1997)(internal quotations  
13 and citations omitted); see also Landes Constr. Co. v. Royal Bank  
14 of Canada, 833 F.2d 1365, 1371 (9th Cir. 1987)(Rule 59 motion for  
15 a new trial should be granted if "the verdict is against the clear  
16 weight of the evidence . . . . The judge can weigh the evidence  
17 and assess the credibility of witnesses, and need not view the  
18 evidence from the perspective most favorable to the prevailing  
19 party"); Roy v. Volkswagon of America, 896 F.2d 1174 ("The trial  
20 court may grant a new trial, even though the verdict is supported  
21 by substantial evidence, if the verdict is contrary to the clear  
22 weight of the evidence, or is based upon evidence which is false,  
23 or to prevent, in the sound discretion of the trial court, a  
24 miscarriage of justice.")(citation omitted). While the court  
25 undoubtedly has discretion to assess the evidence based on these  
26 various standards ("against the clear weight of the evidence,"

1 "seriously erroneous result," "miscarriage of justice"), the  
2 standard for finding insufficient evidence warranting a new trial  
3 remains stringent.

4 **2. Special Jury Instruction Based on Penal Code § 279.6**

5 Defendants maintain that the court erred when it declined to  
6 give defendants' special jury instruction based on Penal Code  
7 § 279.6. They argue that Section 279.6 "provided a complete  
8 defense to Plaintiffs' federal claims," Defs.' Mot. at 9, and that  
9 the court's refusal to give this instruction "deprived the jury of  
10 important legal considerations probative of the reasonableness of  
11 the Defendants' actions." Defs.' Repl. at 5.

12 Defendants' proposed instruction stated:

13 (a) A law enforcement officer may take a child into  
14 protective custody under any of the following  
circumstances:

15 (1) It reasonably appears to the officer that a  
16 person is likely to conceal the child, flee the  
jurisdiction with the child, or, by flight or  
concealment, evade the authority of the court.

17 (2) There is no lawful custodian available to take  
custody of the child.

18 (3) There are conflicting custody orders or  
19 conflicting claims to custody and the parties cannot  
agree which party should take custody of the child.

20 (b) When a law enforcement officer takes a child into  
21 protective custody pursuant to this section, the officer  
shall do one of the following:

22 (1) Release the child to the lawful custodian of  
23 the child, unless it reasonably appears that the release  
would cause the child to be endangered, abducted, or  
removed from the jurisdiction.

24 (2) Obtain an emergency protective order ordering  
placement of the child with an interim custodian who  
agrees in writing to accept interim custody.

25 (3) Release the child to the social services agency  
responsible for arranging shelter or foster care.

26 (4) Return the child as ordered by a court of  
competent jurisdiction.

1 (California Penal Code section 279.6)

2 Def.'s Supp. Jury Instructions, filed March 27, 2006.<sup>8</sup>

3 First, the court notes that the proffer of the instruction was  
4 untimely. The court instructed the parties in its February 23,  
5 2006 Pretrial Order that counsel's "specific jury instructions  
6 shall be filed fourteen (14) calendar days prior to trial."  
7 Defendants, however, did not submit the proposed instruction at  
8 issue until the day before trial.<sup>9</sup> As the court admonished counsel  
9 during oral argument, such deadlines provide the court with an  
10 opportunity to research difficult questions raised by the proposed  
11 instructions. Defendants' failure to timely submit this  
12 instruction deprived the court of the appropriate opportunity to  
13 consider its applicability. Nevertheless, the court considered the  
14 instruction during trial, and declined to provide it to the jury  
15 for a number of reasons stated on the record and further elaborated  
16 in this order. TT at 253.

17 As the court explained to the parties during trial, the jury  
18 instruction was inappropriate because the evidence overwhelmingly  
19 demonstrated that defendants relied on Welfare and Institutions  
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22 <sup>8</sup> It appears defendants' proposed instruction was derived  
23 verbatim from California Penal Code § 279.6(a)(1), (2), (3) and  
(b)(1), (2), (3), (4).

24 <sup>9</sup> Local Rule 51-163 provides that "[u]nless the Court  
25 otherwise orders or permits, requested jury instructions in civil  
26 and criminal actions shall be filed with the Clerk and copies  
served on all parties at the opening of the trial (emphasis  
supplied).

1 Code in understanding the scope of their duties.<sup>10</sup> TT at 253.  
2 Defendants' testimony consistently demonstrated that defendants  
3 relied on California Welfare and Institutions Code § 305, which  
4 allows warrantless removal of a child when it is reasonable to  
5 believe the child is in "immediate danger of physical or sexual  
6 abuse."<sup>11</sup> Officer Henderson testified that she believed the  
7 standard in determining "whether children should be removed from  
8 their parents" was in "exigent circumstances," and that, "in this  
9 particular case it applied to sexual abuse, that [Crystal] had  
10 either been sexually abused or at risk of being subjected to sexual  
11 abuse." TT at 111-112. Henderson additionally stated that section  
12 305 allowed for the warrantless removal of a child, when there was  
13 "reasonable cause to believe . . . that she had suffered sexual  
14 abuse, and was at a substantial risk to incur sexual abuse." TT  
15 at 114-115. Praegitzer explained that he was concerned that  
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17 <sup>10</sup> The court notes that defendant Praegitzer testified that  
18 officers were required to know both section 305 of the Welfare and  
19 Institutions Code and section 279.6 of the Penal Code prior to  
20 removing a child. TT at 229. Defendants also argued during oral  
21 argument that Penal Code Section 279 is referred to in the  
22 Department's policies, which states that "[o]fficers, you need to  
be familiar with these statutes." As the court noted during oral  
argument, however, and as this order further explains, there was  
little, if any, evidence that defendants operated under the  
authority of Penal Code § 279.6.

23 <sup>11</sup> Section 305 states in pertinent part: "Any peace officer  
24 may, without a warrant, take into temporary custody a minor: (a)  
25 When the officer has reasonable cause for believing that the minor  
26 is a person described in Section 300, and, in addition, that the  
minor has an immediate need for medical care, or the minor is in  
immediate danger of physical or sexual abuse, or the physical  
environment or the fact that the child is left unattended poses an  
immediate threat to the child's health or safety."

1 Crystal was in imminent danger of physical harm based on  
2 "allegations in the report" and "past allegations of abuse." TT  
3 at 207-208. Finally, Officer Richard Leslie testified that the  
4 policy regarding welfare checks for children only referenced  
5 section 305. TT at 235, 247, 248.

6 Although there was some testimony from defendants regarding  
7 Dennis Keller's potential concealment of Crystal, a permissible  
8 ground for removal under the penal code at issue, the evidence  
9 demonstrates that it was not a realistic threat. Henderson  
10 testified that the concealment of Crystal "could be an issue"  
11 because Crystal "was not found at the preschool where she was  
12 supposed to be," and because Dennis Keller "wasn't the custodial  
13 parent at the time as defined by court order." TT at 101, 117,  
14 129. Likewise, Takeda testified that Henderson was concerned that  
15 they did not know where Crystal was, were unable to contact Dennis  
16 Keller, and thought he was concealing Crystal from her mother. TT  
17 at 181-182. Henderson, however, had no difficulty in finding  
18 Crystal at her caretaker's house and both Henderson and Tekada  
19 testified that they had no concerns about Crystal's physical  
20 condition or the competency of her caretaker, Debra Morie  
21 ("Morie"), and that Morie's house was "in an appropriate condition  
22 for a child." TT at 125, 184. Henderson further testified that  
23 she was aware that another Stockton police officer decided Dennis  
24 Keller should care for Crystal while the allegations of sexual  
25 abuse against Crystal's mother were being investigated. TT at 121.

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1 The investigation report notes taken by Henderson also state that  
2 Crystal was taken into custody "due to the fact that [Crystal's  
3 mother] was allegedly molesting Crystal and Dennis' court  
4 visitation was not in effect." TT at 146:2-4. Such evidence  
5 undermines defendants' present assertions that they were concerned  
6 about Dennis Keller's intent to conceal his daughter when she was  
7 not returned to her mother pursuant to the joint custody order.<sup>12</sup>

8 Even though defendants assert in their reply brief and during  
9 oral argument that the court's refusal to provide the instruction  
10 resulted in error justifying a new trial, the evidence demonstrates  
11 that defendants removed Crystal based on the standards set forth  
12 in the Welfare and Institutions Code, not under the California  
13 Penal Code. Indeed, "[a] trial judge is given substantial latitude  
14 in tailoring the instructions so long as they fairly and adequately  
15 cover the issues presented" when "evaluated in the context of the  
16 whole trial." United States v. Marabelles, 724 F.2d 1374, 1382-83  
17 (9th Cir. 1984). "A party is entitled to an instruction about his  
18 or her theory of the case if it is supported by law and has  
19 foundation in the evidence." Jones v. Williams, 297 F.3d 930, 934  
20 (9th Cir. 2002). Here, however, providing the penal code jury  
21 instruction was inappropriate since it has no "foundation in the  
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23 <sup>12</sup> Nor was there any evidence that Mr. Keller's conduct fell  
24 within the scope of the other provisions of section 279.6. There  
25 was a lawful custodian available to take Crystal because it was  
26 Crystal's mother, not Dennis Keller, who was being investigated for  
sexual abuse. Finally, there were no conflicting custody orders  
or disagreement between the parties regarding who should take the  
child.

evidence" and there were no facts to support that defendants were operating under the scope of Penal Code § 279.6.<sup>13</sup> Consequently, defendants' argument that this instruction would have either provided a defense or assisted the jury with assessing the reprehensibility of defendants' conduct must be rejected.

**3. Jury Verdict Form**

Defendants further maintain that they are entitled to a new trial because the jury verdict form was misleading and denied Praegitzer and Henderson due process. Defs.' Mot. at 12. Assuming arguendo that the verdict does not support a new trial, the verdict form explained that if the jury found for the plaintiff "as to any one of the defendants" it had to answer two questions:

What amount of compensatory damages do you award?  
What amount, if any, of punitive damages do you award?

Special Verdict, filed March 31, 2006; Defs.' Mot. at 7.

Defendants assert that the verdict form did not make it clear that punitive damages were only appropriate against Praegitzer and Henderson as individuals, and that punitive damages could not be awarded against the City. Defs.' Mot. at 8. As a result, defendants argue, the jury believed that it could impose punitive damages against the city, not the individual officers and, therefore, based the award on the City's ability to pay. Defs.' Mot. at 12.

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<sup>13</sup> The court assumes, without deciding, that the Penal Code provision was consonant with the United States Constitution.



1 In support of their argument, defendants tender the  
2 declarations of several jurors to demonstrate that the jury was  
3 confused and did not understand who punitive damages could be  
4 awarded against. Defs.' Mot. at 8, 13. These declarations are  
5 inadmissible under Rule 606(b) of the Federal Rules of Evidence and  
6 will not be considered by the court.<sup>14</sup> As the Ninth Circuit has  
7 held, "[a]fter a verdict is returned a juror will not be heard to  
8 impeach the verdict when his testimony concerns his  
9 misunderstanding of the court's instructions." United States v.  
10 Stacey, 475 F.2d 1119, 1121 (9th Cir. 1973). In addition, "it is  
11 improper and unethical for lawyers to interview jurors to discover  
12 what was the course of deliberation of a trial jury" and "neither  
13 a trial court nor an appellate court has the authority to inquire  
14 into the jury's decisional processes." Smith v. Cupp, 457 F.2d  
15 1098, 1100 (9th Cir. 1972). Only when there is an allegation of  
16 juror misconduct is juror testimony admissible regarding  
17 "extraneous influences on the deliberation process." Hard v.  
18 Burlington N. Railroad, 812 F.2d 482, 486 (9th Cir. 1987); see also

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19  
20 <sup>14</sup> Federal Rule of Evidence 606(b) states: "[u]pon an inquiry  
21 into the validity of a verdict or indictment, a juror may not  
22 testify as to any matter or statement occurring during the course  
23 of the jury's deliberations or to the effect of anything upon that  
24 or any other juror's mind or emotions as influencing the juror to  
25 assent to or dissent from the verdict or indictment or concerning  
26 the juror's mental processes in connection therewith, except that  
a juror may testify on the question whether extraneous prejudicial  
information was improperly brought to the jury's attention or  
whether any outside influence was improperly brought to bear upon  
any juror. Nor may a juror's affidavit or evidence of any  
statement by the juror concerning a matter about which the juror  
would be precluded from testifying be received for these purposes."

1 Economou v. Little, 850 F. Supp. 849, 852 (N.D. Cal. 1994) ("The  
2 Ninth Circuit requires a post-verdict inquiry into juror  
3 deliberations only if the court learns of a possible incident of  
4 juror misconduct.").

5 Moreover, any objection to the verdict form was arguably  
6 waived. Defense counsel was given the form with the jury  
7 instructions but failed to object when asked on the record.<sup>15</sup> Even  
8 if defendants did not waive their objection, it is unlikely there  
9 was any juror confusion due to counsels' arguments to the jury.  
10 Plaintiffs' counsel explained during his opening argument that  
11 plaintiffs were "asking for punitive damages against the officers."  
12 TT at 30. He reiterated this point in his closing argument,  
13 stating that "[w]e've asked for punitive damages against the two  
14 individual defendants." TT at 398. Plaintiffs' counsel made  
15 explicit that "[t]hese damages are not available against the City  
16 of Stockton for legal reasons." TT at 398.

17 Similarly, defense counsel clarified during their closing  
18 argument that "[p]laintiffs are asking for punitive damages against  
19 Ken Praegitzer and Kathryn Henderson." TT at 398. Any possibility  
20 of jury confusion was mitigated by both plaintiffs' and defendants'  
21 counsel's clarifications to the jury. Thus, any error committed  
22 by the court through the jury verdict form was harmless error.

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23 <sup>15</sup> Of course, had the defendants voiced any objection to the  
24 form, it was readily modifiable to resolve any confusion. While  
25 the court has no way of knowing whether defendants were  
26 "sandbagging," the present record demonstrates the reason that  
objection must first be made to the trial court for the objection  
to be preserved.

1 Where a motion for a new trial is based on allegations that the  
2 court committed error, the error must be harmful to warrant a new  
3 trial. See Fed. R. Civ. P. 61. A new trial is not justified if  
4 the error was harmless. Glanzman v. Uniroyal, Inc., 892 F.2d 58,  
5 61 (9th Cir. 1989)("If an error does 'not affect the substantial  
6 rights of the parties' it will be deemed 'harmless' and not grounds  
7 for reversal or appeal." This concept under Rule 61 applies at  
8 trial and on appeal)(citation omitted). In the case at bar, any  
9 error committed by the court was harmless. Defendants' motion for  
10 a new trial based on the jury verdict form must be denied.

11 **C. MOTION FOR REMITTITUR**

12 Defendants urge the court to remit the compensatory and  
13 punitive damages awarded to plaintiffs, contending that they are  
14 unsupported by the evidence. The court considers defendants'  
15 contentions below.

16 **1. Standards**

17 Where an award of damages is grossly excessive or monstrous,  
18 clearly not supported by the evidence, or only based on speculation  
19 or guesswork, and gives rise to an inference that "passion and  
20 prejudice" tainted the jury's finding of liability, a new trial may  
21 be in order. Snyder v. Freight, Constr., Gen. Drivers,  
22 Warehousemen & Helpers, Local No. 287, 175 F.3d 680, 689 (9th Cir.  
23 1999)(citing Los Angeles Memorial Coliseum Comm'n v. National  
24 Football League, 791 F.2d 1356, 1360 (9th Cir. 1986); Seymour v.  
25 Summa Vista Cinema, Inc., 809 F.2d 1385, 1387 (9th Cir. 1987)).

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1 However, where there is no evidence that passion and prejudice  
2 affected the liability finding, remittitur of damages "which the  
3 court considers justified" is an appropriate method of reducing an  
4 excessive verdict. Snyder, 175 F.3d at 689; Seymour, 809 F.2d at  
5 1387. When the court, after viewing the evidence concerning  
6 damages in a light most favorable to the prevailing party,  
7 determines that the damages award is excessive, it has two  
8 alternatives: (1) it may grant defendant's motion for a new trial;  
9 or (2) deny the motion conditional upon the prevailing party  
10 accepting a remittitur. Fenner v. Dependable Trucking Co., 716  
11 F.2d 598, 603 (9th Cir. 1983). The prevailing party is given the  
12 option of either submitting to a new trial or of accepting a  
13 reduced amount of damage which the court considers justified. Id.  
14 If the prevailing party does not consent to the reduced amount, a  
15 new trial must be granted. Id. The proper amount of a remittitur  
16 is the maximum amount sustainable by the evidence. D & S Redi-Mix  
17 v. Sierra Redi-Mix & Contracting Co., 692 F.2d 1245, 1249 (9th Cir.  
18 1982); see also, 11 Wright, Miller & Kane, Federal Practice and  
19 Procedure: Civil 2d § 2815 (stating the "maximum amount" theory of  
20 remittiturs "is the only theory that has any reasonable claim of  
21 being consistent with the Seventh Amendment).

## 22 **2. Compensatory Damages**

23 In reviewing a jury's damages award, the court must uphold the  
24 jury's "finding of the amount of damages unless the amount is  
25 'grossly excessive or monstrous,' clearly not supported by the  
26 evidence, or 'only based on speculation or guesswork.' " Handgards,

1 Inc. v. Ethicon, Inc., 743 F.2d 1282, 1297 (9th Cir. 1984) (quoting  
2 Blanton v. Mobil Oil Corp., 721 F.2d 1207, 1216 (9th Cir. 1983),  
3 cert. denied, 471 U.S. 1007 (1985)), cert. denied, \_\_ U.S. \_\_, 105  
4 S.Ct. 963 (1985). In § 1983 cases such as the one at bar, damages  
5 are meant to compensate persons for injuries that are caused by the  
6 deprivation of constitutional rights. Memphis Cmty. Sch. Dist. v.  
7 Stachura, 477 U.S. 299, 307 (1986)(citations omitted).

8 Compensatory damages may include not only out-of-pocket loss and  
9 other monetary harms, but also such injuries as impairment of  
10 reputation, personal humiliation, and mental anguish and suffering.  
11 Id.

12 Defendants contend that the jury's compensatory awards of  
13 \$100,000 to Dennis Keller and \$500,000 to Crystal Keller were  
14 excessive and were so high "as to shock the judicial conscience and  
15 constitute a denial of justice." Defs.' Mot. at 9 (citations  
16 omitted). "[V]iewing the evidence concerning damages in a light  
17 most favorable to the prevailing party," as the court must, Fenner,  
18 716 F.2d at 603, the jury's compensatory damages were supported by  
19 the evidence and not "grossly excessive or monstrous." Los Angeles  
20 Memorial Coliseum Comm'n, 791 F.2d at 1360.

21 Defendants emphasize that the court limited Dennis Keller's  
22 compensatory awards to five days, see Jury Instruction No. 28,  
23 filed March 31, 2006, that he suffered "no physical injuries," and  
24 that "five days of distraction . . . cannot be worth \$100,000."  
25 Defs.' Mot. at 9-10. They make similar arguments with respect to  
26 Crystal Keller, explaining that Crystal suffered "no physical

1 harm," that her fear of officers is due to other causes, and that  
2 she is now a well-adjusted child, "performing well at school, has  
3 lots of friends and plays well with others."<sup>16</sup> Defs.' Mot. at 10-  
4 11. Their attempts at minimizing the injury and thus the  
5 compensatory damages the jury found for plaintiffs are not  
6 successful. As noted above, compensatory damages for § 1983 cases  
7 may also include non-physical injuries such as impairment of  
8 reputation, personal humiliation, and mental anguish and suffering.  
9 See Memphis Cmty. Sch. Dist. v. Stachura, supra.

10 As plaintiffs point out, the record is replete with testimony  
11 that defendants' actions affected the bond between Crystal and  
12 Dennis Keller and caused him mental anguish and emotional trauma.  
13 See, e.g., TT at 292 (Dennis Keller "couldn't concentrate" at work  
14 and in general, he had planned her fifth birthday and felt he had  
15 "somehow failed [his] daughter"); 257 (Dennis Keller "felt badly  
16 he couldn't protect her."). The record also reflects that  
17 defendants' actions affected Crystal's emotional well-being and her  
18 relationship with her father. See, e.g., TT at 54 (Crystal  
19 "worr[ie]s a lot . . . about getting taken again . . ." and is  
20 "scared and terrified" that "[she] would never see [her] dad  
21 again"); 55 (defendants' removal of Crystal affected her schoolwork  
22 and concentration," and she is scared that police will "come and  
23 swipe [her]."). Where, as here, the compensatory damages verdict

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24 <sup>16</sup> Defendants assert that Crystal's anxiety predated July 10,  
25 that she has had only "two recurring nightmares," and that some of  
26 her anxiety derives "from the time she witnessed her mother's  
arrest." Mot. at 10.

1 for Dennis and Crystal Keller finds substantial support in the  
2 record and lie within the range sustainable by the proof, the court  
3 will not play "Monday morning quarterback" and "supplant the jury's  
4 evaluation of the complex and conflicting evidence with its own."  
5 Los Angeles Memorial Coliseum Comm'n, 791 F.2d at 1366 (citations  
6 and internal quotations omitted). Defendants' request to remit  
7 plaintiffs' compensatory damages must be denied.

8 **3. Punitive Damages**

9 The jury imposed \$2 million in punitive damages against  
10 defendants Praegitzer and Henderson, \$1 million for each plaintiff.  
11 Defendants contend that the jury's punitive damages are excessive  
12 and that it furthers "no legitimate purpose and constitutes an  
13 arbitrary deprivation of property." Defs.' Mot. at 13 (citation  
14 omitted). Defendants urge the court to order plaintiffs to remit  
15 a substantial portion of the punitive damages or face a new trial  
16 on punitive damages. Defs.' Mot. at 18. Plaintiffs, on the other  
17 hand, contend that the awards of punitive damages are not  
18 constitutionally excessive. The court will not upset the jury's  
19 finding that Crystal Keller is entitled to \$1 million in punitive  
20 damages. The court concludes, however, that the jury's award of  
21 \$1 million for Dennis Keller is excessive.

22 Both parties correctly point out that BMW of North Am., Inc.  
23 v. Gore, and State Farm Mut. Auto. Inc. Co. v. Campbell provide the  
24 standards governing the court's determination of punitive damages.

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1 Punitive damages can be imposed to further the interest of  
2 "punishing unlawful conduct and deterring its repetition." BMW of  
3 North Am., Inc. v. Gore, 517 U.S. 559, 568 (1996); State Farm Mut.  
4 Auto. Ins. Co. v. Campbell, 538 U.S. 408, 416 (2003). But a  
5 punitive damages award that is "grossly excessive" can be in  
6 violation of the Due Process Clause of the Fourteenth Amendment.  
7 Gore, 517 U.S. at 568. A grossly excessive award "furthers no  
8 legitimate purpose and constitutes an arbitrary deprivation of  
9 property." Campbell, 538 U.S. at 417 (citing Pacific Mut. Life  
10 Ins. Co. v. Haslip, 499 U.S. 1, 42 (O'Connor, J., dissenting)).  
11 They also violate "elementary notions of fairness" by not providing  
12 a person with fair notice "of the severity of the penalty that a  
13 State may impose." Campbell, 538 U.S. at 417.

14 Gore and Campbell provide three "guideposts" for determining  
15 whether a punitive damages award is unconstitutionally excessive:

16 (1) the degree of reprehensibility of the defendant's  
17 misconduct; (2) the disparity between the actual or  
18 potential harm suffered by the plaintiff and the  
19 punitive damages awarded; and (3) the difference between  
the punitive damages awarded by the jury and the civil  
penalties authorized or imposed in comparable cases.

20 Campbell, 538 U.S. at 418 (citing Gore, 517 U.S. at 575). The  
21 court considers in turn these factors with respect to the instant  
22 case.

### 23 I. Reprehensibility

24 "The most important indicum of reasonableness of a punitive  
25 damages award is the degree of reprehensibility of the defendant's  
26 conduct." Gore, 517 U.S. at 575. The Court in Campbell instructed



1 courts to determine reprehensibility by considering whether

2 the harm caused was physical as opposed to economic; the  
3 tortious conduct evinced an indifference to or a  
4 reckless disregard of the health or safety of others;  
5 the target of the conduct had financial vulnerability;  
6 the conduct involved repeated actions or was an isolated  
7 incident; and the harm was the result of intentional  
8 malice, trickery, or deceit, or mere accident.

9 538 U.S. at 419 (citing Gore, 517 U.S. at 575); see also Bains LLC  
10 v. ARCO Prods. Co., 405 F.3d 764, 775 (9th Cir. 2005)(explaining  
11 Campbell "enumerates the factors to be used when evaluating the  
12 reprehensibility of a defendant's conduct").

13 The existence of one factor in favor of a plaintiff does not  
14 in itself support a finding of reprehensibility and, ultimately,  
15 of a punitive damages award. Campbell, 538 U.S. at 419; see also  
16 Planned Parenthood of the Columbia/Willamette, Inc. v. Am.  
17 Coalition of Life Activists, 422 F.3d 949, 959-960 (9th Cir. 2005)  
18 (finding defendant's conduct "on the balance" was sufficiently  
19 reprehensible to warrant punitive damages).

20 The Ninth Circuit has noted that neither Gore or Campbell  
21 addressed the issue of reprehensible conduct by a public official.  
22 S. Union Co. v. Southwest Gas Corp., 415 F.3d 1001, 1011 (9th Cir.  
23 2005).<sup>17</sup> Nevertheless, given the facts of this particular case,

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24 <sup>17</sup> In the context of discrimination claims under 42 U.S.C.  
25 § 1981, given the public trust placed in officials, "[t]he redress  
26 of racial, religious or gender discrimination has been treated as  
a special area of public concern where affront to human rights may  
require high punitives." Id. (citing Zhang v. American Gem  
Seafoods, Inc., 339 F.3d 1020, 1043 (9th Cir. 2003), cert. denied,  
541 U.S. 902 (2004)). By analogy, cases brought under 42 U.S.C.  
§ 1983 against public officials and which deal with the parent-  
child relationship and the deprivation of their civil rights may  
also be a "special area of public concern," especially where, as

1 the court finds that defendants' conduct constituted sufficient  
2 reprehensibility to warrant punitive damages.

3 The court firmly believes that the jury awarded punitive  
4 damages because defendants' actions "evinced an indifference to or  
5 a reckless disregard of the health or safety of others" and that  
6 the conduct at issue most likely "involved repeated actions." In  
7 addition to the trial testimony cited on pages 5-7 of this order,  
8 see supra, Richard Leslie, a sergeant with the City of Stockton,  
9 testified that the Police Chief Edward J. Chavez provided a written  
10 policy on the removal of children from their home, which directs  
11 officers to interview the reporting party, victim, parents or  
12 guardians, the suspect, other persons who can contribute to the  
13 child or family, and paramedics/ambulance personnel before removing  
14 a child. TT at 238. Henderson failed to follow this department  
15 protocol and interviewed none of these individuals removing  
16 Crystal. TT at 105, 107, 110.

17 Leslie also testified that he believed an "officer has a duty  
18 to investigate surrounding circumstances to determine the  
19 reliability of allegations" regarding sexual abuse against a  
20 parent. TT at 243. The evidence at trial revealed that defendants  
21 failed to appropriately investigate the circumstances before  
22 removing Crystal. Henderson testified that she removed Crystal  
23 based on "information she had," on "some allegations against Dennis  
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25 here, defendants repeatedly admitted that they have never obtained  
26 a warrant to remove a child from his or her parents. TT at 220,  
229, 240.

1 Keller in Officer Alverson's report and based on CPS attachments,"  
2 and that she did not independently determine the reliability of  
3 such allegations. TT at 108-111. The record also suggests that  
4 the reasons for removing Crystal were never clear to defendants,  
5 much less made clear to plaintiffs. According to Dennis Keller,  
6 Henderson stated to him on the phone at the time of his daughter's  
7 removal that the removal was prompted by his "breaking [his] court  
8 ordered visitation with the mother." TT at 291. Finally,  
9 Henderson testified that the "decision to remove Crystal" was  
10 ultimately made "at Debra Morie's house," suggesting that the  
11 decision was not thoroughly contemplated. Indeed, the court  
12 concludes that a jury could well conclude that the removal was an  
13 arbitrary exercise of power. Put directly, a reasonable jury could  
14 conclude that defendants' conduct constituted an unreasonable  
15 arrogation of power and that such actions demonstrated an  
16 indifference to the health and safety of plaintiffs. Multiple  
17 witnesses testified that plaintiffs were not made aware of the  
18 removal in advance and that defendants did little to ameliorate the  
19 difficult situation. Dennis Keller testified that he spoke to  
20 Crystal when defendants were at Debra Morie's house and that she  
21 "was begging me and crying and screaming not to let the police take  
22 her," and that she was "totally afraid that [defendants] were going  
23 to take her daddy away." TT at 290. Dennis Keller also testified  
24 that, as noted above, "all [he] was told" was that the removal was  
25 due to his "breaking [his] court ordered visitation with the  
26 mother," not that defendants believed Crystal was in danger of

1 sexual abuse, as defendants testified to during trial. TT at 291.  
2 Debra Hamilton testified that Debra Morie, Crystal's babysitter at  
3 the time of her removal, was "hysterical," "screaming and crying  
4 into the phone" when Crystal was removed, and that at the time,  
5 Dennis Keller "[d]idn't know what his rights were." TT at 256-257.  
6 Crystal Keller testified that she "didn't know what was going on"  
7 when defendants came to remove her, and that she was "scared and  
8 terrified" when Debra Morie told her she needed to go with  
9 defendants. TT at 52.

10 Finally, defendants testified that a warrant has "never" been  
11 issued when the Stockton police department removed a child from his  
12 or her home. Such a policy involves "repeated actions," rather  
13 than an isolated incident.<sup>18</sup> Leslie testified that officers in  
14 Stockton were not "trained to get warrants in these types of  
15 cases," and that in his twenty-two years in the Department,  
16 defendants have "never" obtained a warrant to remove a child from  
17 a home.<sup>19</sup> TT at 239-240. Praegitzer similarly stated that he was

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18 <sup>18</sup> As explained above, Campbell instructed courts to  
19 determine reprehensibility by considering whether, inter alia, the  
20 conduct involved repeated actions or was an isolated incident. 538  
U.S. at 419.

21 <sup>19</sup> Significantly, when the court questioned Sergeant Leslie  
22 whether his officers were trained "that the Fourteenth Amendment  
23 to the Constitution of the United States bears upon the question  
24 of whether or not a child may be removed from his . . . or her  
25 parents," he jocularly answered, "Do we know there is a  
26 Constitution?" TT at 249. It was not until the court admonished  
Sergeant Leslie that the court did not ask the question in jest  
that he responded that his officers were trained with such  
knowledge. Such demeanor during trial, no doubt, supports the  
jury's conclusion that defendants demonstrated an indifference or  
reckless disregard for plaintiffs' rights in the removal of Crystal

1 not aware of any situation where an officer obtained a warrant to  
2 remove a child. TT at 220. In Praegitzer's experience, he had  
3 "never" obtained a warrant to remove a child. TT at 229.  
4 Henderson testified that at the time of Crystal's removal she "had  
5 no experience" with "any requirement that a police officer obtain  
6 a warrant to remove a child from the parents [sic] custody." TT  
7 at 113.

8 In sum, the record substantially supports that defendants'  
9 conduct was sufficiently reprehensible, "the most important indicum  
10 of reasonableness of a punitive damages award." Gore, 517 U.S. at  
11 575.

12 **ii. Ratio**

13 The "most commonly cited" consideration of a punitive damages  
14 award is "its ratio to the actual harm inflicted on the plaintiff."  
15 Gore, 517 U.S. at 580. Punitive damages must bear a "reasonable  
16 relationship" to compensatory damages. Id. In the instant case,  
17 the punitive damages award for Crystal Keller bears a reasonable  
18 relationship to the compensatory damages awarded her. The punitive  
19 damages award for Dennis Keller, however, fails to satisfy due  
20 process and must, indeed, be remitted.

21 The Supreme Court has consistently refused to impose a "bright  
22 line ratio." Campbell, 538 U.S. at 425. Despite the High Court's  
23 unwillingness to establish any sort of calculable formula for lower  
24 courts to determine what ratios would be unacceptably high, the

25 \_\_\_\_\_  
26 Keller.

1 Court has explained that "single digit multipliers are more likely  
2 to comport with due process," and that "in practice, few awards  
3 exceeding a single-digit ratio between punitive and compensatory  
4 damages . . . will satisfy due process." Id. And when  
5 "compensatory damages are substantial, then a lesser ratio, perhaps  
6 only equal to compensatory damages, can reach the outermost limit  
7 of the due process guarantee." Id.

8 In the case at bar, the jury awarded Crystal Keller \$500,000  
9 in compensatory damages and \$1,000,000 in punitive damages, a ratio  
10 of 2:1 overall, which is certainly within the Constitutional limits  
11 enunciated by the Supreme Court.<sup>20</sup> The court finds that this  
12 factor favors plaintiff Crystal Keller, and the court will not  
13 disturb the jury's punitive damages award based on this

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14 <sup>20</sup> In Planned Parenthood of Columbia/Willamette Inc. v.  
15 American Coalition of Life Activists, 422 F.3d 949, 962 (9th Cir.  
16 2005), the Ninth Circuit held that the proper way to compute the  
17 ratio between compensatory and punitive damages awards was to  
18 "compar[e] each plaintiff's individual compensatory damages and  
19 punitive damages awards as to each defendant." "The compensatory  
20 award to each plaintiff is the denominator in the ratio for each  
21 defendant." Id. at 960, n.6. See Transgo, Inc. v. Ajac  
22 Transmission Parts Corp., 768 F.2d 1001, 1024-25 (9th Cir. 1985)  
23 (basing denominator in ratio on the amount for which each defendant  
24 is jointly and severally liable).

25 In the case at bar, because the jury verdict form did not  
26 specify the amount for which each defendant is jointly and  
severally liable in compensatory and punitive damages, the court  
concludes that \$500,000 is the amount for which defendants are  
jointly and severally liable to Crystal Keller in compensatory  
damages and that \$1,000,000 is the amount for which defendants are  
jointly and severally liable in punitive damages. In like manner,  
\$100,000 is the amount for which defendants are jointly and  
severally liable to Dennis Keller in compensatory damages and  
\$1,000,000 is the amount for which defendants are liable to him in  
punitive damages. The damages ratio for Crystal Keller is 2:1  
based on this analysis, and the damages ratio for Dennis Keller is  
10:1.

1 consideration.

2       The punitive damages ratio for Dennis Keller, however is 10:1  
3 overall, which fails Constitutional muster. As the court explained  
4 to the parties during oral argument, the jury recognized the  
5 distinction between the father's loss and injury and the child's  
6 loss and injury when it awarded Crystal Keller \$500,000 in  
7 compensatory damages and \$100,000 to Dennis Keller. That same  
8 judgment, however, was not reflected in the punitive damages award.  
9 Even considering all the inferences in favor of plaintiffs, it  
10 still appears to the court that the punitive damages award for  
11 Dennis Keller is excessive.

12       If this court determines that the evidence supported liability  
13 for Dennis Keller, which this court does, but determines that the  
14 size of the award is excessive, the Ninth Circuit has held that the  
15 court's discretion is somewhat limited:

16       When the court, after viewing the evidence concerning  
17 damages in a light most favorable to the prevailing  
18 party, determines that the damages award is excessive,  
19 it has two alternatives. It may grant defendant's motion  
20 for a new trial or deny the motion conditional upon the  
prevailing party accepting an remittitur. The prevailing  
party is given the option of either submitting to a new  
trial or of accepting a reduced amount of damage which  
the court considers justified.

21 Fenner v. Dependable Trucking Co., 716 F.2d 598, 603 (9th Cir.  
22 1983)(citing Linn v. United Plant Guard Workers, 383 U.S. 53,  
23 65-66(1966); see also 6A James Wm. Moore, et al., Moore's Federal  
24 Practice ¶ 59.08[4] at 59:126-27 ("it may be appropriate, where the  
25 verdict is excessive, to order a new trial unless the claimant  
26 remits a certain sum"). The proper amount of remittitur is the

1 maximum amount sustainable by the evidence. D&S Redi-Mix v. Sierra  
2 Redi-Mix & Contracting Co., 692 F.2d 1245, 1249 (9th Cir. 1982).

3 Taking the evidence as a whole, the court deems \$100,000 to  
4 be the appropriate amount of punitive damages for Dennis Keller.  
5 If he accepts the remittitur, the punitive damages for him will be  
6 reduced to \$100,000. If he does not accept the remittitur, a new  
7 trial will be held limited to the question of a proper punitive  
8 damages award.<sup>21</sup>

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17 <sup>21</sup> The court notes that the third factor to be considered in  
18 assessing the reasonableness of a punitive damages award is the  
19 disparity between the punitive damages award and civil penalties  
20 imposed in comparable cases. Campbell, 538 U.S. at 428 (citing  
21 Gore, 517 U.S. at 575). The court, however, has been unable to  
22 locate similar cases where compensatory and punitive damages awards  
23 were imposed. Defendants cite a number of police cases involving  
24 illegal strip searches cases and police brutality, which the court  
25 finds to be markedly different from the case at bar. Defs.' Mot.  
26 at 18. Plaintiffs cite Franet v. County of Alameda Soc. Services  
Agency, CO2-3787MJJ (N.D. Cal. 2006)(Jenkins, J.), a case in the  
Northern District of California involving the removal of children  
from the parents in Alameda County. There, the jury returned a  
verdict of \$1,220,000 against a social worker who removed two  
children from their mother. Plaintiffs' reliance on Franet,  
however, is misplaced because the court ultimately struck the  
jury's punitive damages award because plaintiffs failed to tender  
evidence that defendant was motivated by evil intent or reckless  
or callous indifference to plaintiff's rights.



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III.

CONCLUSION

Defendants' motion for remittitur is GRANTED IN PART, and  
DENIED IN PART as consistent with the order. All other motions  
are DENIED.

IT IS SO ORDERED.

DATED: July 18, 2006.

  
LAWRENCE K. KARLTON  
SENIOR JUDGE  
UNITED STATES DISTRICT COURT